IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 824 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

JASHUBHAI HUKMAJI RAJPUROHIT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR ASHUTOSH R BHATT for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. The appellant – original accused has filed this appeal against the judgment and order of the learned Special Judge, Mehsana dated 29.8.2001 rendered in N.D.P.S. Case No. 8 of 2000 convicting the present appellant – accused for the offences punishable under Sections 17 and 18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the Act') and sentencing him to suffer R.I for a period of 10 years and fine of Rs.1 lac each and in default thereof to undergo R.I for 2 years.

2. The case of the prosecution as revealed in the complaint and as unfolded during the course of trial is briefly stated as under:-

3. Mr.B.M.Rajpura, Police Inspector, Kalol City Police Station has received an information on 20.9.2000 that one person, namely, Jashubhai Hukamji Rajpurohit handicapped by one leg was coming from Ambica Bus Stand towards Kalol Khuni Bungalow with opium. The said information was registered at Entry No.26 in Station Diary. It was kept in a sealed cover and was sent to Divisional Police Officer, Kalol and District Police Officer, Gandhinagar. Panchas were called and they have shown their willingness to come with raiding party. Mr.Rajpara alongwith Head Constable – Somabhai, Mohanbhai and Prahladbhai Amthabhai as well as Police Constable Ishwarbhai Maganbhai, Jashubhai, Keshavlal and Manuji Becharji have introduced them to the panchas and on making search of

person mutually, no obnoxious thing like opium was found. On making search of government jeep, no obnoxious thing was found. Panchas and persons of Police sat in the jeep taking things of raid such as plastic bag, cloth bag, thread, seal, wax etc, with themselves. Jeep driver was Police Constable – Rameshbhai Sendhabhai. A preliminary panchnama dated 20.9.2000 from 16.20 hours to 16.35 hours regarding the same has been prepared in the police station. Panchas and police started in the government jeep from Police Station via Tower to Nandalal Chawk via Kapileshwar Shopping Centre and turned towards west and went ahead searching the accused person from police line upto Ambica bus stand, but he was found nowhere. There is a pakka road from Ambica bus stand to Ambica police line turning towards east to Navakar Apartment. They had turned towards the same place and on going towards East, they reached the southern gate

of Sardar baugh during the search of the accused.

4. On reaching the said place, they found a person at a distance of 50 feet away in the east on the left side of the road putting on white dhoti and robe, tied with crutch in his right leg. There is a pocket looking like a cloth bag in his left hand. They stopped their vehicle reaching near to him. Panchas and persons of police got down and at 17:00 hours, Mr.Rajpara and panchas have introduced to him and on asking his name and address, he stated his name to be Jashubhai Hukamji Rajpurohit aged 66 years residing at Thobh, Taluka – Oshiya, District- Jodhpur, Rajasthan. They explained him about the information received by them and about the fact that there is an opium with him and as his search is required to be carried out, if he wants, it is to be carried out through a Magistrate. On explaining the same, he

answered in negative to do so. Therefore, on making his search in presence of panchas, there is a dirty Jeans bag in his left hand and looking into it, clothes, one shawl, a small copper pot and a rudraksh chain etc were found in it. There found an opium in transparent plastic bag kept in a pocket inside it.

5. On opening the bag in presence of panchas, there came out smell of opium. A big plastic bag is stuck with opium. So after tearing a plastic bag, an opium was taken out from there. There was two small plastic bags wherein there is a small plastic bag in each of them in which there is an opium. The said opium was taken out from both of those bags and kept with the opium which was taken out from big bag and on weighing the same, it is weighed to be 900 grams. The same valuing to be Rs.4500/- was ceased. Out of the said opium, 50 grams opium was taken for sample

and was packed in one plastic bag affixing a chit signed by panchas on it and the same was sealed and after keeping remaining opium in one plastic bag, the torn empty big plastic bag wherein there was an opium, and two small bags wherein there was an opium along with which there was each separate bag, thus those total 4 bags were also kept in that bag and after keeping the same in one cloth bag, it was sealed after affixing a slip signed by the panchas on it which was seized afterwards. Moreover, 87 currency notes of Rs.100/-, 5 currency notes of Rs.50/- and 129 currency notes of Rs.10 and thereby total currency notes of Rs.10,240/- from another pocket of the said purse (pocket) were found. The said amount believing to be earned from the opium was seized.

6. Thus one bag valuing to be Rs.10/- and total amount of Rs.14750/- has been seized from the accused. On asking the accused that if he

wants to get the opium weighed elsewhere, he stated the same in negative. On asking the accused to produce a license for keeping opium, if he has, he stated that he did not have any such license. The accused was arrested as per law and he has been informed about the reasons for arrest. A complaint was filed against accused for commission of offence under Sections-17 and 18 of the Act with Kalol City Police Station being CR No.258 of 2000.

7. Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, panchnama of scene of offence was prepared, muddamal articles were recovered by drawing panchnama which were sent to F.S.L. for chemical analysis. After obtaining F.S.L. Report, since sufficient incriminating evidence was found against the accused, he was charge-

sheeted in the Court of learned Special Judge, Mehsana. The learned Special Judge, Mehsana framed charge against the accused for commission of the offence punishable under Sections 17 and 18 of the Act.

8. The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned Special Judge, Mehsana in Special Case No. 8 of 2000.

9. To prove the culpability of the accused, prosecution has in all examined as many as 7 witnesses, details of which are as under :-

Sr. No.	Exh. No.	Particulars
01.	8	P.W. 1 – Balabhai Mohanbhai Rajpara (Complainant)
02.	24	P.W. 2 – Akbarbhai Noorbhai Chauhan (Panch)
03.	26	P.W. 3 – Allauddin Lalmiya Saiyed (Panch)
04.	29	P.W. 4 – Prahladbhai Amthabhai
05.	30	P.W. 5 – Lalji Rupaji (P.S.O.)

Sr. No.	Exh. No.	Particulars
06.	31	P.W. 6 – Prahladbhai Atmaram
07.	35	P.W. 7 – Hetubha Govindsinh Jhala

10.The prosecution has also produced several documents and relied upon the contents of the same, details of which are as under :-

Sr. No.	Exh. No.	Type of Evidence
01.	9	Extract of Entry No.26/0 of the Station Diary dated 20.9.2000.
02.	10	Search order.
03.	11	Written intimation to the accused with regard to search before the Magistrate.
04.	12	Written intimation to the accused if he wants to get weighed Afin on other weigh scale.
05.	13	Intimation to the accused with regard to registration of complaint against him as well as notice to the relatives of the accused regarding his arrest.
06.	14	Report given by P.I to register the complaint.
07.	15	Written complaint given by P.I.
08.	17	Extract of Entry No.28/0 of Station Diary dated 20.9.2000.
09.	18	Report submitted to the D.S.P regarding arrest of the accused.
10.	19	Report made to the J.M.F.C regarding search order and pachnama.
11.	20	Depute order.
12.	21	Despatch Entry of muddamal.
13.	25	Panchnama of the scene of offence.

Sr. No.	Exh. No.	Type of Evidence
14.	27	Despatch Entry with regard to sending of muddamal.
15.	30	Entry regarding despatch of muddamal to FSL through Police Constable Devjibhai Bhikhabhai.
16.	36	Forwarding letter of FSL.
17.	37	Analysis Report.
18.	38	Report regarding sending of muddamal sample back.
19.	39	Search order as per Section-42 of the NDPS Act.
20.	40	Search panchnama of Vishal Hotel.
21.	42	Search panchnama of house of Amaratbhai Ghemarbhai.
22.	41	Search order as per Section-42 of the Act with regard to search of house of Amaratbhai Ghekarbhai.

11. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Mehsana explained the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated.

12.On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Special Judge, Mehsana has held that the prosecution has established beyond reasonable doubt that the charge levelled against the accused was proved and, therefore, the accused was held guilty of the offence punishable under Sections 17 and 18 of the Act. Thereafter, the learned Special Judge, Mehsana heard the accused and his advocates on sentence and looking to the gravity of the offence committed by the accused and looking to the circumstances, original accused was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, R.I of two years for the offence punishable under Sections 17 and 18 of the Act.

13. Mr.Ashutosh R. Bhatt, learned advocate appearing for the appellant has submitted

that the impugned judgment and order of conviction and sentence passed by the learned Special Judge is contrary to the provisions of law and against the weight of evidence on record and, therefore, the same deserves to be quashed and set aside. He has further submitted that the prosecution has not proved its case against the appellant – accused beyond reasonable doubt. He has further submitted that there are contradictions in the version of statements of the prosecution witnesses before the police and the prosecution evidence before the Court. He has further submitted that there are contradictions in the deposition of the complainant and the complaint filed by the complainant before the police regarding procedure of sealing and packing of the muddamal article and, therefore, it creates doubt whether the same goods which were seized were sent to FSL or not. He has further submitted that the learned Special

Judge has not properly appreciated the deposition of panch witnesses. Panch witnesses Akbar Noorbhai Chauhan (Ex.24) and Allauddin Lalmiya Saiyed (Ex.6) have not supported the prosecution case with regard to search and seizure before the panchas and, therefore, the entire prosecution case fails qua search and seizure. He has further submitted that the prosecution has flagrantly violated the mandatory provisions contained in Sections-50, 55 and 57 of the Act as well as the relevant provisions of the Code of Criminal Procedure. He has further submitted that there is flagrant violation of mandatory provisions of Section-50 of the Act and that alone vitiated the trial because the accused was only asked whether he wanted to be taken before a Magistrate and was not offered to be taken before any Gazetted Officer i.e partial compliance would not meet the mandate prescribed by Section-50 of the Act. That even from the written intimation Ex.11 it

transpires that Police Inspector, Kalol intimated the appellant accused that his search was to be made before the panchas and if he wanted, he could be searched before the Magistrate. That it is an admitted position that only partial offer was made to the accused regarding search before the Magistrate and there was no mention regarding the name of Gazetted Officer. He has further submitted that there is also flagrant violation of Section-102(3) of the Code of Criminal Procedure, which alone vitiated the trial, because the learned Magistrate had not been informed about seizure of muddamal article. There was also no compliance of provisions of Section-57 of the Act with regard to arrest and seizure of muddamal article and that non-compliance itself would invalidate the trial. He has further submitted that the Police Officer has not affixed his own seal on the muddamal article sealed. It is contemplated under Section-55

of the Act that the sample so taken shall also be sealed with a seal of the officer-in-charge of the police station. He has further submitted that the prosecution has not examined any carrier to show that how the muddamal, which was seized was sent to the FSL and, therefore, that itself invalidates the trial.

14. Mr.Bhatt has further submitted that the sealing procedure is also defective and the slip duly signed by the panchas as well as P.I. were not affixed as required under law and in accordance with the judgments delivered by this Court.

15.In support of this last submission, Mr. Bhatt relied on the decision of this Court in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** wherein after considering earlier three decisions of this Court,

namely, (1) Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153, (2) unreported decision dated 17.08.2001 rendered in Criminal Appeal No. 323 of 1996 filed by Jitendra @ Sanjaykumar Suryakant Desai against State of Gujarat and (3) decision dated 07.05.2002 rendered in Criminal Appeal No. 287 of 1999 filed by Ganpatram Punmaram Vishnoi against State of Gujarat, the Court held that as per the law laid down by this Court, the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn. On re-appreciation of evidence, the Court was satisfied that correct and fool-proof procedure of sealing was not resorted to by the Investigating Officer and possibility of tampering with muddamals was not ruled out at all. The Court has evaluated such deficiency in light of other discrepancies brought on

record of the case and held that it was difficult to sustain conviction of the appellant – accused. The appeal was accordingly allowed and the appellant – accused was ordered to be released from jail forthwith unless his presence in jail was needed with reference to any other case.

16. Mr. K. T. Dave, learned Additional Public Prosecutor appearing for State of Gujarat, on the other hand, supported the order and judgment of the learned Special Judge, Mehsana and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in Section 50, 52, 55 & 57 of the Act as well as Section-102(3) of the Criminal Procedure Code were violated. So far as sealing procedure is concerned, he has submitted that as per the

Panchnama drawn at the site, the proper procedure has been followed and hence, it cannot be said that the sealing procedure conducted by the raiding party was defective.

17. We have considered the submissions advanced by Mr.Ashutosh Bhatt, learned advocate appearing for the appellant – original accused and Mr. K.T. Dave, learned Additional Public Prosecutor appearing for State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Special Judge, Mehsana convicting the appellant – original accused.

18. Though several contentions were raised before the Trial Court and before this Court, we confine ourselves to deal with the strong protest lodged against sealing procedure adopted by the prosecution as well as non-examination of person, who has brought the muddamal article to FSL. Even otherwise, we are not much impressed by the other contentions raised by Mr. Bhatt. The main grievance was that the identity of the muddamal and the samples sent to the F.S.L. is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. There is contradiction in the evidence of the prosecution witnesses with regard to the sealing procedure and the possibility of tampering the contents of the sample cannot be ruled out.

19. To examine and appreciate this contention, relevant provisions in the Act or Rules made thereunder touching this subject matter are required to be looked into. Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction / Orders under Section 55 of the Act. Standing Order No. 1/88 dated 15.03.1988, Standing

Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under:-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each

sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

20. Despite the aforesaid Standing Orders/Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before the Court. In the case of **Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153**, this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance. Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

21. In **Criminal Appeal No. 323 of 1996, in the**

case of Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the Investigating Officer and Panch witnesses, the Court has observed that after drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and wax seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose behind carrying out the search, taking of

sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If the slip is put inside as was done in that case, the possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tempering. The procedure,therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the accused.

22. This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002 Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police station. If the police keeps the slip signed by the panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag, possibility of tampering the muddamal cannot be ruled out as the official seal always remains with the concerned

police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

23. All the aforesaid three judgments have been referred to and relied upon by this Court in its later decision in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** and held that the slips bearing signatures of the

panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

24. This very Bench has considered this issue regarding sealing procedure in Criminal Appeal No. 1366 of 1999 with Criminal Appeal No. 34 of 2000 decided on 21.09.2006, wherein all the previous judgments were referred to and relied upon and the appellant-accused was acquitted on the ground that the sealing procedure was not properly followed by the prosecution.

25. If we consider the impugned judgment and order as well as the ratio of the above referred judgments of this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we come to the conclusion that in

the present case also, proper procedure has not been followed by the prosecution.

26. P.W. 1 – Balabhai Mohanbhai Rajpara Ex.8 is the Police Inspector at Kalol City Police Station. He is one of the member of the raiding party. He has testified in his deposition that the muddamal article opium found from the possession of the accused – appellant, was weighed and its weight was about 900 gram. Out of which 10 gram was taken as sample and it was put into plastic bag and that plastic bag was put in the cloth bag and in that cloth bag slip duly signed by the panch witness was put and thereafter that bag was sealed. Another slip duly signed by the panch witness was also put on the cloth bag. He has further testified that the muddamal article was sent to FSL through Police Constable bearing Buckle No.108 on 21.9.2000. Necessary entry was made in the station diary. In his cross-examination he

has explained in detail the entire sealing procedure and reiterated that two slips duly signed by the panch witnesses were placed at two different places, one inside the bag and other on the bag. He has admitted that there was only one seal of Kalol City Police Station and no seal of Police Station Officer was affixed.

27. P.W. No.2 – Akbarbhai Nurbhai Chauhan Ex.24 is the panch witness. He turned hostile and he has not supported the case of the prosecution.

28. P.W. No.3 – Alauddin Lalmiya Saiyed Ex.26 is also the panch witness. He turned hostile and he has not supported the case of the prosecution.

29. Panchnama of the scene of offence was drawn and marked at Ex.25. As far as sealing procedure is concerned, it gets support from

the evidence of the police witness. However, panch witnesses have contradicted the version of the panchnama.

30. P.W. No.4 – Prahladbhai Amthabhai Ex.29 is the Police Constable. He is also one of the member of the raiding party. His version regarding sealing of muddamal article is also in conformity with the version of PW No.1. In his cross-examination he, however, stated that the muddamal article was kept in plastic bag and that bag was closed through staple pin and the seal duly signed by the panch witness was kept on the plastic bag and no seal was affixed on that plastic bag.

31. P.W. No.5 – Laljibhai Roopaji Ex.30 is the P.S.O. He has registered the complaint. He has also made entry with regard to muddamal article being sent to FSL. He has simply stated in his deposition that the order was passed at Ex.20 to make further proceeding in

the matter. He has, however, not stated anything as to whom the muddamal article was given for making its delivery to the FSL. Extract from station diary Ex.30 states that Police Constable – Devji bearing Buckle No.108 has handed over the muddamal article to FSL. However, this Police Constable has not been examined by the prosecution.

32. P.W. No.5 - Prahladbhai Atmaram Prajapati Ex.31 is a Barnish Constable. His deposition does not through any light so far as sealing aspect is concerned.

33. P.W. No.6 – Hetubha Govindsinh Jhala Ex.35 is the Investigating Officer. He has filed charge-sheet.

34. The complaint is at Ex.15 it clearly refers that 50 gram opium was taken as sample from the muddamal article and it was kept in plastic bag. The seal duly signed by the

panch witness was kept in that plastic bag and thereafter the said bag was sealed. F.S.L report is at Ex.37. It says that one sealed parcel packed in cloth bag and tied with cotton thread was received. The seal of the Police Inspector of Kalol City Police Station was affixed on that parcel. While opening the said parcel the slip duly signed by the panch witness was found from the said plastic bag.

35. Because of the material contradictions between the deposition of prosecution witnesses regarding the sealing procedure and FSL report, this Court is of the view that there is possibility of tampering with the contents of the samples before they were sent to F.S.L. for analysis. When there is possibility of tampering with the contents of the samples, then no reliance can be placed on the expert opinion and the report of the F.S.L. and it cannot be said that the

contraband articles were seized from the possession of the accused and that the sample therefrom was taken and that the sample was sent for analysis and that the report of the expert is regarding the same. When it is so, then the report deserves to be discarded in toto. In light of this discrepancy coupled with the non-examination of the person, who has taken the muddamal article to FSL and contradiction of other witnesses as well as the panchas having been turned hostile, it is very unsafe to sustain the conviction order. The appellant - accused is in jail and more than 6 years have passed. He is more tan 70 years old and also handicapped. Despite this defective sealing procedure, the appellant – accused has to remain in jail for more than 6 years and it is very unfortunate that the appeal could not be heard earlier.

36. In peculiar facts of the case and in light

of the decisions referred to herein above and the principles laid down therein, this Court is of the view that the conviction order passed against the accused cannot be sustained. The Appeal, therefore, succeeds. The judgment and order of the learned Special Judge, Mehsana dated 29.8.2001 passed in N.D.P.S. Case No. 8 of 2000 convicting the appellant - accused for the offences punishable under Sections 17 and 18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 and sentencing him to suffer R.I for a period of 10 years and fine of Rs.1 lac and in default thereof to undergo R.I for 2 years for commission of such offence is hereby quashed and set aside. The appellant – accused i.e. Jashubhai Hukamji Rajpurohit, is hereby acquitted from the charges levelled against him. The respondent – State of Gujarat and the jail authority is hereby directed to release the appellant – accused from jail forthwith unless his presence is

required in connection with any other case. Amount of fine, if paid shall be refunded to him.

37. This appeal is accordingly allowed.

(A. M. KAPADIA, J.)

(K.A. PUJ, J.)

kks